

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0443P

**Withholding Tax
For the Calendar Year 2002**

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

II. **Tax Administration** - Interest

Authority: IC 6-8.1-10-1

The taxpayer protests the interest assessment.

STATEMENT OF FACTS

The late penalty and interest were assessed on the late payment of required Indiana withholding for non-resident partners for the calendar year 2002.

The taxpayer is a company located out-of-state.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the error was the result of misinformation from a Department employee. Furthermore, the taxpayer feels the requirement that the partnership withhold is moot since the nonresident partners file Indiana tax returns.

With regard to the misinformation, the Department points out that the conversation with the Department employee happened two weeks after the due date for the filing of the

withholding return. As there is no way the conversation with the Department employee could allow for a timely filing of the withholding return, the taxpayer fails to establish reasonable cause on this point.

With regard to the Indiana regulation which requires partnership withholding, Indiana law requires the Department to follow the law in applying guidelines for tax compliance. As Indiana regulation 45 IAC 3.1-1-107(a) states the partnership is required to withhold on nonresident partners, the Department is required by law to see that the taxpayer in question properly withholds.

The regulation which provides the guideline for penalty is as follows:

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. As inattention is negligence and subject to penalty, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

II. Tax Administration – Interest

Interest may not be waived according to statute. IC 6-8.1-10-1.